

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

MWANZA

MISCELLANEOUS LAND CASE APPEAL NO. 67 OF 2008

**(From the Decision of the District Land and Housing Tribunal of Tarime District
at Tarime in Land Case Appeal No. 17 of 2007 and Original Ward Tribunal of
Nyanungu Ward in Criminal Case No. 20 of 2007)**

DAMARI ZABRON APPELLANT

VERSUS

WANSATO WAMBURA 1ST RESPONDENTS

CHACHA WAMBURA 2ND RESPONDENTS

JUDGMENT

MWAMBEGELE, J.:

The facts of this case are largely undisputed and not difficult to comprehend. This matter commenced in the Ward Tribunal of Nyanungu in the Tarime District of Mara Region as Criminal Case No. 20 of 2007. Damari Zabron; the appellant herein had, in the Ward Tribunal (henceforth the trial Tribunal), sued one Muniko Wambura (who did not appeal), Chacha Wambura; the second Appellant herein

and Wansato Wambura; the first Appellant herein for criminal trespass into the disputed parcel of land. The accused persons were found guilty of the offence of criminal trespass and convicted to serve a one year jail term or fine of Tshs. 10,000/= each. The right of appeal, within thirty days after the decision of the trial Tribunal, was explained to the parties.

The Respondents were aggrieved by the decision of the trial Tribunal. They successfully appealed to the District Land and Housing Tribunal (henceforth the appellate Tribunal). In the appellate Tribunal, the appeal was christened Land Appeal No. 17 of 2007.

The appellant was dissatisfied with the decision to the appellate Tribunal. She thus, through the services of Butambala & Co, Advocates, filed this appeal submitting three grounds; namely:

1. That the District Land and Housing for Tarime erred in law in varying the judgment of the Nyanungu Ward, which had originally heard the case as a criminal case and delivered a judgment with penal consequences while it had no jurisdiction to hear criminal cases at all;

2. The Land Chairman erred in law by invoking the provisions of section 35 (1) of the Land Disputes Courts Act, to give validity to criminal proceedings which were entertained in Nyanungu Ward Land Tribunal; and
3. As the issue of ownership had not been heard fully at the Nyanungu Ward Land Tribunal, it was not proper to justify the issue of Land ownership at Tarime District Land and Housing Tribunal as the matter had originally been filed and entertained as a criminal case

This appeal was argued before me on 19.10.2012. The appellant was absent but had the good services of a renowned lawyer; one W. K. Butambala. The Respondents appeared in person and unrepresented.

At the hearing, Mr. Butambala dropped the third ground of appeal. On the first ground of appeal, Mr. Butambala submitted that the trial Tribunal entertained the case as a criminal case; it was the offence of criminal trespass. He submitted that under section 4 of the Land Disputes Courts Act, Cap 216, the appellate Tribunal had no criminal jurisdiction to entertain this matter. On the second ground, Mr. Butambala submitted that in a matter in which he had no jurisdiction, the chairman proceeded to invoke the provisions of section 35 (1) (b) of Cap 216 to vary the decision of the Ward Tribunal. This was wrong as he could vary

something on which he had no jurisdiction. He submitted that the proceedings in the appellate Tribunal were void. Mr. Butambala concluded that the respondent ought to have appealed to the Primary Court and not to the District Land and Housing Tribunal.

The first Respondent in his submission, which was adopted by the second Respondent, conceded that the matter was a criminal case from the outset. He thus prayed that this court should order that the same should start *de novo* as a civil matter. To buttress this argument, ***Keraryo Wambura and 2 Others Vs Marwa Yusufu***, Miscellaneous Land Appeal No. 57 of 2010 Mwanza (unreported) was cited.

In a short rejoinder, Mr. Butambala submitted that the ***Keraryo Wambura*** case is distinguishable from this case as in that case, it was not clear from the outset that the proceedings were criminal. In this case, there is no dispute that the proceedings in the trial Tribunal was criminal and were treated as such from the very beginning.

Having summarised the facts of the case and submissions of the parties, the ball is now on my court to decide on the grounds of appeal in the light of the rival

submissions of the parties. This is the noble task to which I now turn. The parties to this suit are in agreement that this matter was entertained as criminal case in the trial Tribunal. The jurisdiction of the Ward Tribunal is stipulated under the provisions of Sections 8 and 9 of the Ward Tribunals Act, Cap 206 (hereinafter Cap 206). The provisions of Section 8, so far as is relevant to the present case, read:

“(1) ...

(2) ...

(3) Without prejudice to the generality of subsections (1) and (2), a Tribunal shall have and exercise jurisdiction in relation to all matters and disputes arising under all laws and directives passed by the appropriate authority, and laws and orders for the time being in force in relation to or affecting the business and affairs of the ward made or passed by a local government authority or any other competent legislative authority within the area of the Tribunal's jurisdiction.

And Section 9, again, so far as is relevant to the instant case, reads:

“ ***Particular matters of jurisdiction***

(1) Without prejudice to the generality of the jurisdiction conferred on a Tribunal by section 8, a

tribunal shall have jurisdiction to enquire into and determine disputes relating to the offences and civil disputes specified in the Schedule to this Act and may impose penalties to the extent specified in that Schedule.

(2) ...”

And the Schedule to this Act proceeds to provide for offences under the Penal Code, Cap 16 (henceforth Cap 16) triable by the Ward Tribunal. Criminal trespass under Section 299 of Cap 16 is one of such offences. A penalty of fine or imprisonment for one year is provided for to any convicted offender. It should be noted that the order of imprisonment under Cap 206 will “have no force or effect unless endorsed by the Primary Court Magistrate for the area in which the Tribunal is established” [see subsection (2) of section 19 of Cap 206]. Immediately after making an order for imprisonment, the Tribunal must cause it to be presented to the Primary Court Magistrate for endorsement [see subsection (3) of section 19 of Cap 206]. As per Section 20 of Cap 206, a person aggrieved by the decision of a Tribunal may within sixty days appeal in writing to a Primary Court. And according to Section 23A of Cap 206 as amended by Clause 6 of the Schedule to Cap 216, section 20 does not apply to the Ward Tribunal in the

exercise of its jurisdiction in any matter of a civil nature relating to land, in which case the appeal lies to the District Land and Housing Tribunal.

The above discussion makes it clear that the Ward Tribunal has, *inter alia*, jurisdiction to try criminal cases under Cap 16. The appeals lie to the Primary Court. In the instant case, the trial Tribunal dealt with Criminal Case No. 20 of 2007 in which the Respondents together with another person were charged with and convicted of the offence of criminal trespass under section 299 of the Penal Code. They were sentenced accordingly. The Respondents were aggrieved by the conviction and perhaps the sentence meted to them. The proper course to take, in the circumstances, was to prefer an appeal to the Primary Court as stipulated by the law and not to prefer an appeal to the District Land and Housing Tribunal as happened.

The appellate Tribunal ought to have seen the appeal before it in the light of the foregoing discussion. It being a criminal case, the appellate Tribunal lacked jurisdiction to entertain it. The appellate jurisdiction of the District Land and Housing Tribunal is provided for under Section 34 of Cap 216. As already alluded to hereinabove, as per Section 23A of Cap 206 (as amended), no appeal lies to the District Land and Housing Tribunal in criminal matters entertained by the Ward

Tribunal. Such appeals lie to the Primary Court under Section 20 of Cap 206 as amended. It was therefore not proper for the appellate Tribunal to entertain the appeal which was criminal in nature. This takes care of the first ground of appeal.

On the second ground of appeal, the Appellant argues that the Chairman erred in law by invoking the provisions of section 35 (1) (b) of Cap 216, to give validity to criminal proceedings which were entertained in Nyanungu Ward Land Tribunal. The Appellant's contention, the way I perceive it, is that the appellate Tribunal, having no jurisdiction to entertain the matter, it also lacked jurisdiction to invoke the powers conferred upon it by section 35 (1) (b) of Cap 216. The relevant part of the Judgment of the appellate Tribunal reads:

"... I am of the view that I should not quash the whole proceedings but I should vary the decision under section 35 (1) (b) of the Land Disputes Courts Act, 2002 (Acct No. 2 of 2002). The Criminal proceedings in the trial Tribunal is hereby nullified, the civil proceedings to remain mutatis mutandis. This is all because although the criminal aspect of the matter, the trial Tribunal all the same determined the question of ownership of the suit land"

Then appellate Tribunal proceeded to conclude:

“For the foregoing, I allow the appeal as prayed by the appellants that the respondent to continue occupying the land where she has planted coffee trees, the appellants to occupy the rest”.

With due respect, I find this holding oddly strange. If anything, what was before the trial Tribunal was, despite the title given to it, a criminal appeal; not both criminal and civil. If at all the trial Tribunal decided who owned the land, it was, to my understanding, in a bid to establish the offence of trespass, for how could it prove the commission of the offence without knowing who the owner of the trespassed land was? One cannot be a trespasser in his own land, can he?. It is my considered view that, in the circumstances, it was incumbent upon the trial Tribunal to establish who the owner of the trespassed parcel of land was in order to know whether the offence of criminal trespass was committed or not. The proceedings were criminal whose proof is, unlike in civil cases in which it is on the preponderance of probabilities, beyond reasonable doubts.

I agree with Mr. Butambala, learned Counsel that the Chairman of the appellate Tribunal had no jurisdiction to vary the decision of the Ward Tribunal while he had no jurisdiction to entertain it in the first place. The proceedings in the District

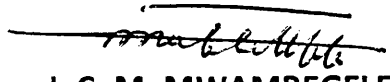
Land and Housing Tribunal are but a nullity. The second ground of appeal also succeeds.

In the upshot, this appeal is allowed with the usual consequences of costs. The proceedings of the District Land and Housing Tribunal are quashed and set aside.

It is so ordered.

DATED at MWANZA this 29th day of October, 2012




J. C. M. MWAMBEGELE
JUDGE